

regard to the need for health care services for that employee that results in the employer being required to reimburse the pool in whole or in part.

Added by St.2006, c. 58, § 46, eff. Jan. 1, 2007.

Historical and Statutory Notes

2006 Legislation

St.2006, c. 58, § 46, an emergency act, was approved April 12, 2006, and by § 142 as

amended by St.2006, c. 324, § 66 made effective Jan. 1, 2007.

§ 6E. Violations of workplace standards relating to asbestos; cease and desist orders

Research References

Treatises and Practice Aids

57 Mass. Prac. Series § 5:14, Asbestos Abatement.

§ 6F. Penalties

Research References

Treatises and Practice Aids

32 Mass. Prac. Series § 540, Crimes Relative to Payment of Wages and Receipt of Public Assistance.
57 Mass. Prac. Series § 5:14, Asbestos Abatement.

57 Mass. Prac. Series § 5:28, Executive Office of Labor and Workforce Development.

Notes of Decisions

In general 1

1. In general

Environmental statutes and regulations governing removal and containment of asbes-

tos did not create private cause of action to enforce compliance. *Sullivan v. Chief Justice for Admin. and Management of Trial Court* (2006) 858 N.E.2d 699, 448 Mass. 15. Environmental Law ⇐ 297

§ 6F½. Action for temporary restraining order or injunction against violations of Secs. 6A to 6E; enforcement

(a) In addition to the cease and desist authority granted in section 6E and the criminal penalties provided for in section 6F, whenever the commissioner has reason to believe that a person, firm, corporation or other entity is engaging in or is about to engage in a violation of sections 6A to 6E, inclusive, or of any regulations under said sections 6A to 6E, inclusive, he may bring an action in the name of the commonwealth against such person, firm, corporation or other entity to restrain the violation by temporary restraining order or preliminary or permanent injunction. The action may be brought in the superior court of the county in which such person, firm, corporation or other entity resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person, firm, corporation or other entity has no place of business within the commonwealth. If more than 1 person, firm, corporation or other entity is joined as a defendant, the action may be brought in the superior court of the county where any 1 of defendants reside or has his principal place of

business, or in Suffolk county. The court may issue temporary restraining orders or preliminary or permanent injunctions.

(b) Any person, firm, corporation or other entity that violates an injunction issued under this section shall be subject to a civil penalty of not more than \$10,000 for each such violation; provided, further, that each day during which a person, firm, corporation or other entity fails to comply with sections 6A to 6E, inclusive, shall be considered a separate violation. For the purposes of this section, the court issuing such an injunction shall retain jurisdiction, and the case shall be continued, and in such case the department may petition for recovery of this civil penalty.

(c) In addition to the remedies under subsections (a) and (b), the commissioner may issue a written warning or a civil citation for violations of this chapter or regulations under this chapter. For each violation, a separate citation may be issued requiring any of the following: that the infraction be rectified or that a civil penalty of not more than \$5,000 for each violation be paid to the commonwealth, within 21 days of the date after issuance of such citation.

(d) In determining the amount of each civil penalty, the department shall include, but not be limited to, the following considerations: the actual and potential impact on public health, safety and welfare and the environment of the failure to comply; whether the person, firm, corporation or other entity being assessed the civil penalty took steps to prevent noncompliance, to promptly come into compliance and to remedy and mitigate whatever harm might have been done as a result of such noncompliance; whether the person, firm, corporation or other entity assessed the civil penalty has previously failed to comply with any regulation, order, license or approval issued or adopted by the department, or any law which the department has authority or responsibility to enforce; deterring future noncompliance; the financial condition of the person, firm, corporation or other entity being assessed the civil penalty; and the public interest.

(e) Notwithstanding this section, the maximum civil penalty that may be imposed upon any person, firm, corporation or other entity who has not previously been either criminally convicted of a violation of this chapter or issued a citation under this chapter, shall be not more than \$2,500, except that in instances in which the commissioner determines that the person, firm, corporation or other entity lacked specific intent to violate this chapter, the maximum civil penalty for the person, firm, corporation or other entity that has not previously been either criminally convicted of a violation of this chapter or issued a citation under this chapter shall be not more than \$1,000.

(f) Upon a failure to comply with the requirements set forth in a citation, the commissioner may order the cessation of all of the relevant activities of the person, firm, corporation or other entity, and shall, within 10 days after such order, schedule a hearing on the suspension or revocation of the license, under this chapter. Any license suspension or revocation under this section shall also apply to all affiliates of the person, firm, corporation or other entity as well as any successor company or corporation that the commissioner upon investigation, determines to not have a true independent existence apart from that of the violating person, firm, corporation or other entity.

(g) Any person, firm, corporation or other entity aggrieved by a citation or order issued pursuant to this section may appeal by filing a notice of appeal with the commissioner within 10 days after the receipt of the citation or order. Chapter 30A shall apply to such appeals.

(h) No officer of any corporation which has failed to pay a civil penalty under this section shall incorporate or serve as an officer of any corporation which did not have

a legal existence as of the date that the penalty became due and payable to the commonwealth.

(i) The commissioner may adopt regulations to carry out this section.

Added by St.2008, c. 182, § 55, eff. July 1, 2008.

Historical and Statutory Notes

2008 Legislation

St.2008, c. 182, § 55, an emergency act, was approved July 13, 2008, and by § 121 made effective as of July 1, 2008.

§ 6G. Release or waiver of damages caused by asbestos

Research References

Treatises and Practice Aids

17 Mass. Prac. Series § 17:31, Release.

10A Mass. Prac. Series § 42:55, Landlord and Tenant--Negligence--In General.

10A Mass. Prac. Series § 54:182, Release.

§ 8. Notices and hearings before adoption of regulations and orders; effective dates

Research References

Treatises and Practice Aids

57 Mass. Prac. Series § 4:31, CM at Risk Project Delivery Method--Trade Con-

tractors--Prequalification and Request for Bids. Notification

§ 17. Entry of places of employment for examinations and investigations; access to records

Research References

Treatises and Practice Aids

57 Mass. Prac. Series § 4:36, Design--Build Project Delivery Method--Request for Qualifications.

§ 19. Prevention of employment

Research References

ALR Library

142 ALR 1018, Applicability and Effect of Workmen's Compensation Act in Cases of Injury to Minors.

Treatises and Practice Aids

Employment Coordinator Labor Relations § 2:26, Massachusetts.

29 Mass. Prac. Series § 8:4, Employee-Independent Contractor Distinction--Use of Own or Employer's Equipment.